Abdul Salam bin Husin v Majlis Angkatan Tentera & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–13 OF 2009(W)
ARIFIN ZAKARIA CJ (MALAYA), RICHARD MALANJUM CJ (SABAH AND SARAWAK) AND JAMES FOONG FCJ
28 SEPTEMBER 2010

Administrative Law — Natural justice — Breach — Cancellation of appellant's commission as lieutenant in RMAF — Whether Armed Forces Council in breach of natural justice when it had not accorded appellant right to be heard before recommending that his commission be cancelled — Whether cancellation of appellant's commission null and void — Whether right to be heard prior to dismissal of member of armed forces excluded by cl 1 of art 135 of the Federal Constitution — Whether exemption of right to be heard for members of armed forces must apply throughout and at every stage leading to cancellation of commission — Armed Forces Act 1972 s 9 — Federal Constitution arts 132 & 135

The appellant, a member of the Armed Forces was commissioned as second lieutenant of the Royal Malaysian Air Force ('RMAF') on 11 April 1981 and later promoted to lieutenant on 11 April 1985. On 27 March 1986, the Armed Forces Council ('AFC') decided to recommend to the Yang di-Pertuan Agong ('YPA') the cancellation of the appellant's commission as lieutenant in the RMAF. By a letter dated 7 May 1986, the appellant was informed that his commission as an officer of the RMAF was cancelled pursuant to s 9 of the Armed Forces Act 1972 ('the Act'). Dissatisfied with this outcome, the appellant filed a civil suit in the High Court for, inter alia, a declaration that the purported cancellation of his commission was null and void and for a declaration that he remain a lieutenant in the RMAF with no loss to seniority, damages and costs. It was the appellant's case that as the AFC had not accorded him the right to be heard before the AFC, there was a breach of natural justice. According to the appellant this common law right of *audi alteram partem*, or the right to be heard, was not prohibited by the Federal Constitution ('Constitution') or by any statutory law and that as a result of this flaw in procedure he should be reinstated. The High Court found the purported cancellation of the plaintiff's commission by the YPA under s 9 of the Act to be valid in law and held that it had no jurisdiction to inquire into the circumstances under which the appellant ceased to hold office. When the High Court dismissed his claim the appellant appealed to the Court of Appeal. The Court of Appeal agreed with the High Court and dismissed the appellant's appeal. The Court of Appeal found that by virtue of cl 1 of art 135 of the Constitution, a member of the armed forces was not accorded the right to be heard before he was dismissed or reduced in rank and that this right to be heard

applied to all stages of the termination process including the proceedings before the AFC. This was the appellant's appeal against the decision of the Court of Appeal on the issue as to whether an officer of the armed forces whose commission was cancelled by the YPA pursuant to s 9 of the Act was nevertheless entitled to be heard by the AFC before it made its recommendation to the YPA.

Held, dismissing the appeal with costs:

(1) There are a plethora of cases that hold that the right to be heard prior to the dismissal of a member of the armed forces was excluded by cl 1 of art 135 of the Constitution. The most prevalent reason that seems to stem from these cases is that since the commission was at the pleasure of the Crown then conversely it could be withdrawn at any time at the pleasure of the Crown without the Crown being obliged to give any reasons for its act. Another reason for the deprivation of this right to be heard prior to cancellation of a commission is public policy, ie that it would be in the best interest of the state if a member of the armed forces was not allowed to remain. The other pertinent reason would be the necessity to maintain discipline within the armed forces which was absolutely vital if the military was to be functional and efficient (see paras 12 & 18–20).

(2) To give full effect to the objective and intention of cl 1 in art 135 of the Constitution as well as s 9 of the Act, the exemption of the right to be heard for members of the armed forces must apply throughout and at every stage leading to the cancellation of the commission. This entire process, though involving stages, cannot be taken separately and by piece meal with the right to be heard interjected in a particular stage. Any attempt to read into the law the existence of a right to be heard at some stage of this process would be defeating the true intention and spirit of the Constitution and s 9 of the Act (see paras 21 & 26).

(3) In the instant case, there was clear provision of the law in cl 1 of art 135 of the Constitution read with art 132 and s 9 of the Act divesting such right to be heard for members of the armed forces prior to the cancellation of their commission of service. It was the court's duty to give effect to the provisions of the Constitution and statutory law without attempting to modify and qualify it, particularly when there was no ambiguity (see paras 22 & 26).

[Bahasa Malaysia summary

Perayu, ahli angkatan tentera menerima tauliah sebagai leftenan muda Tentera Udara DiRaja Malaysia ('TUDM') pada 11 April 1981 dan kemudiannya ditauliahkan kepada leftenan pada 11 April 1985. Pada 27 Mac 1986, Majlis Angkatan Tentera ('MAT') memutuskan untuk mencadangkan kepada Yang

di-Pertuan Agong ('YPA') pembatalan pentauliahan perayu sebagai leftenan di dalam TUDM. Melalui surat bertarikh 7 Mei 1986, perayu diberitahu bahawa pentauliahan dia sebagai pegawai TUDM dibatalkan berikutan s 9 Akta Angkatan Tentera 1972 ('Akta'). Tidak berpuas hati dengan keputusan ini, perayu memfailkan tindakan sivil di Mahkamah Tinggi untuk, antara lain, perisytiharan bahawa pembatalan pentauliahannya adalah tidak sah dan batal dan untuk perisytiharan bahawa dia kekal sebagai leftenan di dalam TUDM tanpa kehilangan kekananannya, ganti rugi dan kos. Adalah kes perayu bahawa memandangkan MAT tidak memberikan dia hak untuk didengar di hadapan MAT, terdapat kemungkiran keadilan asasi. Mengikut perayu hak *common law* audi alteram parte mini, atau hak untuk didengar, tidak dilarang oleh Perlembagaan Persekutuan ('Perlembagaan') atau oleh mana-mana undang-undang statutori dan bahawa akibat kecacatan dalam prosedur ini dia patut dikembalikan semula kepada jawatannya. Mahkamah Tinggi mendapati pembatalan pentauliahan perayu oleh YPA di bawah s 9 Akta adalah sah di sisi undang-undang dan memutuskan bahawa ia tidak mempunyai bidang kuasa untuk menyiasat keadaan di bawah mana perayu diberhentikan daripada bekerja. Apabila Mahkamah Tinggi menolak tuntutannya perayu merayu kepada Mahkamah Rayuan. Mahkamah Rayuan bersetuju dengan Mahkamah Tinggi dan menolak rayuan perayu. Mahkamah Rayuan mendapati bahawa mengikut klausa 1 perkara 135 Perlembagaan, seseorang ahli angkatan tentera tidak diberikan hak untuk didengar sebelum dia dibuang kerja atau diturunkan pangkat dan bahawa hak untuk didengar ini beraplikasi kepada semua peringkat proses penamatan kerja termasuk prosiding-prosiding di hadapan MAT. Ini adalah rayuan perayu terhadap keputusan Mahkamah Rayuan atas isu sama ada seseorang pegawai angkatan tentera yang pentauliahannya dibatalkan oleh YPA berikutan s 9 Akta walau bagaimanapun berhak untuk didengar oleh MAT sebelum ia membuat cadangannya kepada YPA.

Diputuskan, menolak rayuan dengan kos:

(1) Terdapat terlalu banyak kes yang memutuskan bahawa hak untuk didengar sebelum pembuangan kerja seseorang ahli angkatan tentera telah dikecualikan oleh klausa 1 perkara 135 Perlembagaan. Alasan yang jelas yang berbangkit daripada kes-kes ini adalah bahawa memandangkan pentauliahan adalah atas perkenan Yang di Pertuan Agong maka ia boleh dilucutkan pada bila-bila masa oleh Yang di Pertuan Agong tanpa kewajipan oleh Yang di Pertuan Agong untuk memberi apa-apa alasan untuk tindakannya. Alasan yang lain untuk pelucutan hak untuk didengar ini sebelum pembatalan pentauliahan adalah polisi awam iaitu ia demi kepentingan negeri jika ahli angkatan tentera tidak dibenarkan untuk kekal di dalamnya. Alasan lain yang berkaitan adalah keperluan untuk mengekalkan disiplin dalam angkatan tentera yang

mana adalah benar-benar penting untuk pasukan tentera terus berfungsi dan cekap (lihat perenggan 12 & 18–20).

(2) Untuk menguatkuasakan objektif dan niat klausa 1 perkara 135 Perlembagaan dan juga s 9 Akta, pengecualian hak untuk didengar untuk ahli-ahli angkatan tentera mesti diaplikasikan pada keseluruhannya dan pada setiap peringkat yang membawa kepada pembatalan pentauliahan. Keseluruhan proses ini, walaupun berperingkat, tidak boleh dibuat secara berasingan dan terpisah dengan hak untuk didengar dicelah di peringkat yang tertentu. Apa-apa percubaan untuk mentafsir undang-undang mengenai kewujudan hak untuk didengar di peringkat perjalanan proses ini akan menjejaskan niat dan kuasa sebenar Perlembagaan dan s 9 Akta (lihat perenggan 21 & 26).

(3) Dalam kes ini, terdapat peruntukan undang-undang yang jelas dalam klausa 1 perkara 135 Perlembagaan dibaca bersama perkara 132 dan s 9 Akta melucutkan hak untuk didengar sedemikian kepada ahli-ahli angkatan tentera sebelum pembatalan pentauliahan perkhidmatan mereka. Ia adalah tugas mahkamah untuk menguatkuasakan peruntukan-peruntukan Perlembagaan dan undang-undang statutori tanpa mencuba untuk mengubah suai dan meluluskannya, terutamanya apabila tidak terdapat kekaburan (lihat perenggan 22 & 26).]

Notes

For cases on breach, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 221–226.

Cases referred to

Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 MLJ 114, SC (refd)

Government of Malaysia v Mahan Singh [1975] 2 MLJ 155, FC (refd)

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal [2001] 2 MLJ 417, FC (refd)

Lloyd and others v McMahon [1987] AC 625, HL (refd)

Najar Singh v Government of Malaysia & Anor [1974] 1 MLJ 138, FC (refd)

Public Services Commission Malaysia & Anor v Vickneswary a/p RM Santhivelu (substituting M Senthivelu a/l R Marimuthu, deceased) [2008] 6 MLJ 1; [2008] 6 CLJ 573, FC (refd)

R v Governors of Darlington Free Grammar School (1844) 6 QB 682 (refd)

Ridge v Baldwin and others [1963] 2 All ER 66, HL (refd)

S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors [1982] 1 MLJ 204; [1982] CLJ (Rep) 314, FC (refd)

Selvaraju a/l Ponniah v Suruhanjaya Perkhidmatan Awam Malaysia & Anor [2007] 7 MLJ 1; [2007] 6 CLJ 245, FC (refd)

Tufnell, In re (1876) 3 Ch D 164, Ch D (refd)

Twist v Randwick Municipal Council (1976) 12 ALR 379, HC (refd)

Legislation referred to

Armed Forces Act 1972 s 9
Federal Constitution arts 132, 135, 135(1), (2), 2(a)

Appeal from: Appeal No W-01–99 of 1999 (Court of Appeal, Putrajaya)

Karpal Singh (Yvonne How with him) (Karpal Singh & Co) for the appellant.
Narkunavathy Sundareson (Senior Federal Counsel, Attorney General's Chambers) for the respondents.

James Foong FCJ:

INTRODUCTION

[1] The question posed to this court is straight forward:

> Whether an officer of the armed forces whose commission is cancelled by the Yang di-Pertuan Agong pursuant to s 9 of the Armed Forces Act 1972, although not required to be heard by the Yang di-Pertuan Agong, having regard to art 135(1) and (2) of the Federal Constitution, is nevertheless entitled to be heard by the Armed Forces Council before it makes its recommendation to the Yang di-Pertuan Agong.

BACKGROUND FACTS

[2] The appellant was appointed a member of the armed forces on 1 July 1980. He was commissioned as second lieutenant of the Royal Malaysian Air Force ('RMAF') on 11 April 1981. After completing a course in logistic, he was assigned as senior logistic officer to the RMAF's base in Butterworth, Penang and on 11 April 1985, he was promoted to lieutenant (RMAF).

[3] The Armed Forces Council, which is responsible for the administration of the armed forces in Malaysia, convened a meeting on 27 March 1986. It was decided at this meeting to recommend to the Yang di-Pertuan Agong the cancellation of the appellant's commission as lieutenant in the RMAF.

[4] By letter dated 7 May 1986, the appellant was informed that his commission as an officer of the RMAF was cancelled pursuant to s 9 of the Armed Forces Act 1972. This was subsequently published in the government *gazette* bearing No 5438 on 26 August 1986.

[5] Dissatisfied with this outcome, the appellant filed a civil suit in the High Court at Kuala Lumpur seeking the following reliefs:

(a) a declaration that the purported cancellation of his commission is null and void;

(b) a declaration that he remains a lieutenant in the RMAF with no loss to seniority, emoluments and benefits due to him as such;

(c) damages;

(d) an account be taken of all the salaries, emoluments and benefits due to him; and

(e) interest and costs.

THE APPELLANT'S ARGUMENT

[6] The appellant conceded that the armed forces come within the ambit of public services as stated in art 132 of the Federal Constitution ('Constitution') and by virtue of cl 1 of art 135 of the Constitution such member of the armed forces is not accorded the right to be heard before he is dismissed or reduced in rank. But, before the Yang di-Pertuan Agong cancels a commission of an officer of the armed forces, s 9 of the Armed Forces Act requires a recommendation from the Armed Forces Council. It is the contention of the appellant that since there is this requirement, he should have been accorded a right to be heard before the Armed Forces Council made the recommendation to the Yang di-Pertuan Agong. This common law right of audi alteram partem is not prohibited by the Constitution or by any statutory law. As the Armed Forces Council had not accorded to the appellant this right to be heard before the Armed Forces Council, there is a breach of natural justice. Consequently, as a result of this flaw in procedure he should be reinstated.

[7] To appreciate this argument, I set out below the relevant parts of arts 132 and art 135 of the Constitution:

132 Public services

(1) For the purpose of this Constitution, the public services are —

(a) the armed forces;

(b) the judicial and legal service;

(c) the general public service of the Federation;

(d) the police force;

(e) (repealed);

(f) the joint public services mentioned in Article 133;

(g) the public service of each State; and

(h) the education service.

(2) (not applicable).

(2A) Except as expressly provided by this Constitution, every person who is a member of any of the services mentioned in paragraphs (a), (b), (c), (d), (f) and (h) of Clause (10) holds office during the pleasure of the Yang di-Pertuan Agong, and except as expressly provided by the Constitution of the State, every person who is member for the public service of a State hold office during the pleasure of the Ruler or Yang di-Pertuan Negeri.

135 Restriction on dismissal and reduction in rank

(1) No member of any of the services mentioned in paragraphs (b) to (h) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank: …

(2) No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard.

[8] As s 9 of the Armed Forces Act is also relevant to this case, I reproduce this:

Cancellation of commissions

(9) The Yang di-Pertuan Agong may on the recommendation of the Armed Forces Council at any time without assigning any reason therefore cancel any commission granted under the provisions of this Part.

THE DECISIONS OF THE COURTS BELOW

[10] The High Court dismissed the appellant's suit on these grounds:

The plaintiff (the appellant), as here, is governed by the Armed Forces Act 1972 and the court has no jurisdiction to inquire into circumstances under which he ceased to hold office. That being so, it is my finding that the purported cancellation of the plaintiff's commission by Yang di-Pertuan Agong under s 9 of the said Act is valid in law.

In the premise and for reasons given, the writ and statement of claim is dismissed with costs.

[11] Dissatisfied with this decision, the appellant appealed to the Court of Appeal. His appeal was dismissed for these reasons:

From the authorities and the statutory provisions aforesaid, I am of the view that the exclusion of the members of the armed forces from being afforded the right to be heard under art 135(2) of the Federal Constitution applies to all stages of the termination process including the proceedings before the Council. To hold otherwise would mean that the cancellation of a commission of a member of the armed forces could no longer be made without cause and without reason. It would also be contrary to the well established common law principle which is preserved by s 9 of the Act.

Under the Act, the power to cancel the appellant's commission is vested in the Yang di-Pertuan Agong, and it is a right exercisable at his discretion at any time without assigning any reason. In the present case it has been established, vide the said *gazette* notification, that the Yang di-Pertuan Agong had exercised the power conferred upon him and assented to the cancellation of the commission. In my view, once it has been so established, it is not open for the court to make further inquiry on the propriety of the said cancellation.

ANALYSIS

[12] It is common ground that the right to be heard prior to the dismissal of a member of the armed forces is excluded by cl 1 of art 135. Unlike members of other public services whose right to be heard before dismissal or reduction in rank is protected under cl 2 of art 135 of the Constitution, members of the armed forces do not enjoy this privilege. There is a plethora of cases affirming such right to members of the other public services — see *Najar Singh v Government of Malaysia & Anor* [1974] 1 MLJ 138; *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 MLJ 114 at p 128; *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417 at p 447. The exemption of the armed forces from this is by the exclusion of para (a) of cl 2 of art 135 of the Constitution.

[13] The rationale for the exemption of the right to be heard before dismissal in the armed forces may be derived from the following authorities.

[14] The first is *In re Tufnell* (1876) 3 Ch D 164 where at p 173, Mallins VC has this to offer:

It would be a most injurious thing to the public service if the Crown had not the power, which we know it has and exercise constantly, of saying to any naval or military officer misconducting himself, whether in his military or naval, or in his private capacity, simply by notice in the *gazette*, that the Crown has no longer occasion for his services. It is an arbitrary power, and one which may be exercised most injuriously to the interests of the officer, but such is the benignity and the conduct of government and of the sovereign towards all officers, naval, military, or others, that it is never exercised arbitrarily or improperly, or except on proper occasions, and it is absolutely necessary for the discipline of the army and navy, and for the good conduct of the public service, that an arbitrary power should exist.

[15] Then in *Ridge v Baldwin and others* [1963] 2 All ER 66 at p 71 Lord Reid said:

... It is always been held, I think rightly, that such an officer has no right to be heard before he is dismissed and the reason is clear. As the person having the power of dismissal need not have anything against the officer, he need not give any reason.

A That was stated as long ago as 1670 in *R v Stratford-upon Avon* where the corporation dismissed a town clerk who held office *durante bene placito*. The leading case on this matter appears to be *R v Governors of Darlington Free Grammar School* (1844) 6 QB 682, although that decision was doubted by Lord Hatherley LC in *Dean v Bennett* (1870) LR 6 Ch App 489 at p 496 and distinguished on narrow grounds in *Willis v Childe* (1851) 13 Beav 117. I fully accept that where an office is simply held at the B pleasure the person having power of dismissal cannot be bound to disclose his reasons. No doubt he would in many cases tell the officer and hear his explanation before deciding to dismiss him. But if he is not bound to disclose his reason and does not do so, then, if the court cannot require him to do so, it cannot determine whether it would be fair to hear the officer's case before taking action.

C

[16] In *R v Governors of Darlington Free Grammar School* (1844) 6 QB 682, a very old case where the master of a school was dismissed by its governors without a prior right to be heard, the court has these reasons to offer:

D

A general want of reputation in the neighbourhood, the very suspicion that he has been guilty of the offences stated against him in the return, the concerned belief of the truth of such charges amongst the neighbours, might ruin the well being of the school if the master was to continue in it, although the charge might be untrue, and at all events the proof of the facts themselves insufficient before a jury.

E

[17] In the *Government of Malaysia v Mahan Singh* [1975] 2 MLJ 155, Suffian LP opined:

F I am of the opinion that the cardinal principle obtaining here during British rule lasting about 125 years that a public servant holds office at the pleasure of the Crown, is an important principle that should not be whittled away in the absence of express statutory word whittling it, for as stated by Sproule J in *Pillai v State of Kedah* [1927] 6 FMSLR 160 at p 170 government employment being good for the public, it must not continue when it is no longer for the public good; it is essential for the G public good that the Crown should not be hampered in dismissing a servant whose continuance in office it deems detrimental to the best interests of the state and its good government, by any fear of suits in reprisal; indeed such continuance in office may be a danger to the community. The only amendment I would make to the above observation is that in the light of our Constitution, these days dismissal must comply with art 135.

H

[18] From these rationals, the most prevalent reason seem to stem from the fact that the commission of a member of the armed forces is at the pleasure of the Crown: *durante bene plactio* (which basically means: 'during our good I pleasure'). When such commission is at the pleasure of the Crown then conversely it can be withdrawn or cancelled at any time at the pleasure of the Crown. The Crown is not obliged to give any reason for doing so.

[19] Another reason for the deprivation of this right to be heard prior to cancellation of a commission is public policy. As members of the armed forces play an important role in the defence of the nation, the continuance of any of its members may at times be detrimental to the best interest of the state; the security of the country may be compromised if he is allowed to remain.

[20] One other more pertinent reason is the necessity to maintain discipline within the armed forces which is absolutely vital if the military is to be functional and efficient. Any compromise to this would affect discipline and threaten the chain of command necessary to effectively defend the nation.

[21] With the Constitution expressly exempting the armed forces from this right to be heard before cancellation of a commission, can it be argued that this is only limited to the time when the Yang di-Pertuan Agong cancels a commission and not when the Armed Forces Council deliberate on the recommendation to be made? It is my considered view that if the answer is in the positive, the entire provision of cl 1 in art 135 of the Constitution as well as s 9 of the Armed Forces Act would be rendered meaningless. The supreme law of the land and the Armed Forces Act have expressly and unequivocally pronounced the exemption of this right to be heard for members of the armed forces and the rationale for this is already discussed. To give full effect to the objective and intention of these provisions of the law, it is my opinion that this exemption must apply throughout and at every stage leading to the cancellation of the commission. This entire process, though involving stages, cannot be taken separately and by piece meal and interject a right to be heard in a particular stage. If this were to be accepted, then cl 1 of art 135 of the Constitution and s 9 of the Armed Forces Act would be frivolous and nugatory.

[22] I wish to reiterate that it is the court's duty to give effect to the provisions of the Constitution and statutory law without attempting to modify and qualify it, particularly when there is no ambiguity. There are situations, like in this case, where the laws are explicit and enacted as such for good measures to discount such common law rights of *audi alteram partem* in the armed forces. In support of this proposition, I cite the often quoted passage by Barwick CJ of Australia in *Twist v Randwick Municipal Council* (1976) 12 ALR 379:

> ... if the legislation has made provision for that opportunity to (to be heard) be given to the subject before his person or property is so affected, the court will not be warranted in supplementing the legislation, even if the legislative provision is not as full and complete as the court might think appropriate. Thus, if the legislature has addressed itself to the question whether an opportunity should be afforded the citizen to be relevantly heard and has either made it clear that no such opportunity is to be given or has, by its legislation, decided what opportunity should be afforded, the court being bound by the legislation as much as is the citizen, has no warrant to vary the legislative scheme.

[23] This passage has been accepted with approval by this court in *Selvaraju a/l Ponniah v Suruhanjaya Perkhidmatan Awam Malaysia & Anor* [2007] 7 MLJ 1; [2007] 6 CLJ 245 and *Public Services Commission Malaysia & Anor v Vickneswary a/p RM Santhivelu (substituting M Senthivelu a/l R Marimuthu, deceased)* [2008] 6 MLJ 1; [2008] 6 CLJ 573 at p 586.

[24] To further support my view that not all common law principles relating to natural justice is applicable, a passage in *Lloyd and others v McMahon* [1987] AC 625 at p 703 is of assistance:

> My Lords, the socalled rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when anybody, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on anybody the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statue to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.

[25] This is more forcefully put by Eusoffe Abdoolcader J in *S Kulasingam & Anor v Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204 at pp 210–211; [1982] CLJ (Rep) 314 at p 317:

> The rules of natural justice vary in content and ambit according to the circumstances and context … approved the proposition that the courts should not fly in the face of a clearly evinced Parliamentary intention to exclude the operation of the audi alteram partem rule.
>
> The Legislature can by clear words exclude the principles of natural justice in the absence of specific constitutional guarantees. In an appeal from New Zealand the Privy Council approved of the idea that natural justice could be effectively excluded by a legislative code … stating that it is not 'the function of the court to redraft the code' and referring with approval to the decision of the High Court of Australia … which held in effect that it is not for the court to amend the statute by engrafting upon it some other provision that it might think more consonant with a complete opportunity for an aggrieved person to present his views and to support them by evidentiary material.

[26] To repeat, in this instant case there is clear provision of the law in cl 1 of art 135 of the Constitution read with art 132 and s 9 of the Armed Forces Act divesting such right to be heard for members of the armed forces prior to the cancellation of their commission of service. With such explicit provisions in the law, this court is in no position nor would it lend a hand in interpreting into the law such a right. This divested right applies to all stages or tiers leading to the

cancellation of the commission. Any attempt to read into the law the existence of such right at some stage of this process would be defeating the true intention and spirit of the Constitution and the relevant provision of the Armed Forces Act.

CONCLUSION

[27] For reasons aforesaid, my answer to the question posed before this court is in the negative. Accordingly, this appeal is dismissed with costs.

[28] My brother judges, Arifin Zakaria and Richard Malanjum have read this judgment in draft and associate themselves with it.

Appeal dismissed with costs.

Reported by Kohila Nesan